IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.180 OF 2005

IN

COMPANY PETITION NO.166 OF 2002

NRB Bearings Ltd. ...Applicants

Versus

M/s.Modistone Ltd. & Ors. ...Respondents

.....

Ms.Asha Bhambwani for Applicants.

Mr.A.H.Shah with Mr.A.Ramakrishna for Respondent No.3.

Mr.S.C.Gupta, Official Liquidator is present.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 15, 2005.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. This Application is filed by the landlord in respect of premises being Flat No.10 admeasuring 330 square meters carpet area in Shangrila Building, 27-A, Carmichael Road, Mumbai - 400 026

along with Garage No.10 for direction against the Official Liquidator to hand over and return back the possession of the said property to the Applicants without any encumbrance.

3. During the pendency of this Application, it transpired that the Respondent No.3 was claiming to be in possession of the suit premises. In view of the said development, Respondent No.3 was impleaded as party to the present Application. According to the Respondent No.3, he has been inducted in the premises by Company in liquidation M/s.Modistone Limited. It was asserted by Respondent No.3 that he has already filed Suit before the Small Causes Court being T.E.& R. Suit No.152/164 of 2000 for declaration that he is tenant in respect of the suit premises. However, it is not in dispute that the said Suit has been dismissed by the Judgment and decree dated 3rd May 2005 answering the claim of the Respondent No.3 in the negative. In other words, even the Rent Court has now resolved the issue regarding the claim of the tenancy. Indeed, Respondent No.3 has carried the matter in appeal against the said decision.

However, it appears that the Appeal as has been filed by Respondent No.3 is barred by limitation. The Respondent No.3 has taken out application for condonation of delay in filing the appeal. Sufficient opportunity was given to the Respondent No.3 to pursue the appeal pending before the Small Causes Court. The matter has been adjourned for that purpose on several occasions in the past. In my order dated June 23, 2005 I had made it more than clear that the Respondent No.3 should file the proposed appeal and ensure that interim order is passed on the said appeal before the next date of hearing of the present Application. However, the Respondent No.3 has merely lodged the Appeal, which, as mentioned earlier, is barred by limitation and has taken out application for condonation of delay in filing appeal. The said application has not been pursued inspite of the adjournments granted on 4/8/2005, 5/8/2005, 19/8/2005 , 25/8/2005 and lastly on 1/9/2005 by this Court, awaiting the decision on the delay application. Every time the delay application pending before the Appellate Bench of Small Causes Court is adjourned for one reason or the other. It

is obvious that the attempt of the Respondent No.3 is to only prolong the proceedings so as to remain in possession of the suit premises knowing fully well that there is no merit in the claim of the Respondent No.3, which claim has been fully considered and negated by the Trial Court.

4. I am not expressing any opinion with regard to the said claim of tenancy set up by the Respondent No.3 as such in the present Application. Suffice it to observe that there is no decree in favour of the Respondent No.3 holding him to be tenant in respect of the suit premises so as to enable him to occupy the premises in his own rights. In that sense, it is the Respondent Company which was occupying the premises, which is now in liquidation. The Official Liquidator has made it clear that the premises are no more required for the activities of the Respondent Company in liquidation.

5. Thus understood, the Application ought to succeed in view of the exposition of the Apex Court in the case of **Ravindra Ishwardas Sethna & Anr.**

vs. Official Liquidator, High Court, Bombay & Anr. reported in AIR 1983 SC 1061.

6. Counsel for the Respondent No.3, however, relies on the decision in the case of **Smt.Nirmala R.Bafna vs. Khandesh S. & W.M. Co.Ltd. reported in 1992 Mah.RCJ 498.** The ratio of this decision is clearly distinguishable on facts. In that case, the landlord was accepting the third party as subtenant in the suit premises and in the light of that position, the matter was considered. In the present case, however, the landlord is disputing the claim of the Respondent No.3, leave alone, accepting him as subtenant in the suit premises. The Respondent No.3 has not satisfied the Official Liquidator about his claim nor has been able to satisfy the Rent Court in that behalf as the Suit filed by the Respondent No.3 has already been dismissed on 3rd May 2005 for the reasons recorded by the Rent Court. Counsel for the Respondent No.3 submits that the Respondent Company will be entitled for protection under the provisions of the Maharashtra Rent Control Act, 1999.

7. As mentioned earlier, the Official Liquidator has made it more than clear that the premises in question are no more required for the purposes of activities of the Respondent Company, which has been ordered to be wound up in terms of order of this Court. If it is so, in view of the legal position expounded in the case of **Ravindra Ishwardas Sethna (supra)**, the Application ought to succeed in terms of prayer clauses (a)(i) and (a), which reads thus:

> "(a)(i) That this Hon'ble Court be pleased to direct the respondent no.3 to hand over vacant and peaceful possession of the suit premises to the Official Liquidator.
>
> (a) That this Hon'ble Court be pleased to direct the Official Liquidator of the Respondent/Defendant Company to hand over and return back the possession of the suit premises to the applicants without any encumbrances."

8. Application made absolute on the above terms.

9. At this stage, Counsel for the Respondent No.3 prays that the operation of this order be stayed to enable the Respondent No.3 to take up the

matter in appeal.

10. This order not to be given effect to for a period of three weeks from today, even though the prayer is opposed by the Counsel for the Applicant.

11. At this stage, Counsel for the Applicant points out that the Company is in arrears of rent since July 2000. However, no relief is claimed in that behalf. It will be open to the Applicant to register that claim before the Official Liquidator, if so advised, which will be considered in accordance with law.

12. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.